IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 657/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A..P. Lavande, J**
DATE : 20.3.2007

Heard Shri A.K.Somani, learned counsel for the appellant.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 22.6.2006 passed by the 2nd Ad hoc Additional Sessions Judge, Washim in Regular Civil Appeal No. 130/03 by which the appeal filed by the appellant against the Judgment and decree dated 3rd May, 2002 passed by the 3rd Joint Civil Judge, Jr.Dn., Washim in Regular Civil Suit No. 298/2000 has been dismissed..

3. The appellant is the original plaintiff and respondents are the original defendants in the above suit. Defendants 1 to 4 are the brothers of the plaintiff.

Defendants 5 and 6 are son and wife respectively of Shriram Tale deceased brother of the plaintiff.

4. The plaintiff filed the above suit for partition and possession in respect of the suit property belonging to Kamaji Tale who expired 21.11.1988. The plaintiff claimed 1/6th share in the suit property. The defence of the defendants was that the plaintiff had relinquished her share in the suit property and she had put her thumb impression on the partition-deed executed in the year 1993 between her brothers. In cross-examination the plaintiff admitted that she had put her thumb impression on partition deed and that she had relinquished her share in the suit property. Relying upon the said admission the trial court negatived the claim of the plaintiff for partition and separate possession and held that although the plaintiff was entitled to 1/6th share in the suit property she was not entitled to the reliefs sought for. The lower appellate court confirmed the findings given by the trial court.

5. Mr. Somani, learned counsel for the appellant/ plaintiff submitted that in the absence of any written relinquishment deed the trial court as well as lower appellate court could not have given the finding of relinquishment in favour of the defendants. He further submitted that the defendants played fraud on the plaintiff and managed to get admission in her cross-examination and, therefore, the application filed before the lower appellate court seeking amendment of the plaint ought to have been allowed. He further submitted that the findings recorded by both the courts are contrary to the evidence on record and as such perverse and, therefore, interference is called for in this appeal.

6. Having perused the records and having considered the submissions made by the learned counsel for the appellant/plaintiff I do not find any merit in the present appeal. The trial court ,in my opinion, was justified in holding that the plaintiff had relinquished her right on the basis of the admission given by her while cross-examination. Having

perused the application for amendment filed by the plaintiff before the lower appellate court I find it difficult to accept the statements made therein. In any case, the plaintiff could not have filed an application for amendment in appeal filed by her to get out of the admission made by her on oath during her cross-examination. Therefore, in my opinion, the lower appellate court was justified in dismissing the application for amendment filed by the plaintiff. As stated above, the finding given by the trial court that the plaintiff had relinquished her right to the suit property is the finding based upon admission of the plaintiff and as such cannot be faulted. I do not find any perversity or illegality in the findings recorded by both the courts below. No substantial question of law is involved in the present appeal. Hence, the appeal is summarily rejected.

Judge

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